18-421

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~550.~~ 20893

A. AND G. MILTENBERGER AS A. MILTENBERGER & CO., PLAINTIFFS IN ERROR,

vs.

EDWIN G. COOK.

IN ERROR TO THE FOURTH DISTRICT COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 18, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 550.

A. AND G. MILTENBERGER AS A. MILTENBERGER & CO., PLAINTIFFS IN ERROR,

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1 STATE OF LOUISIANA.

Fourth district court for the parish of Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

Petition.—Filed Jan. 30th, 1868.

To the honorable the fourth district court of New Orleans:

The petition of Edwin G. Cook, a resident of Hazelhurst, Mississippi, respectfully represents that he is, and for the last two years has been, collector of internal revenue for the United States in and for the 1st district of Mississippi; that the city of New Orleans is the place of deposit for revenue collected in his district; that, for the convenience and advantage of the cotton-shippers in his district and their factors in New Orleans, he advertised in the New Orleans papers, in 1866, that he would accept payment of the internal-revenue tax on cotton in drafts upon factors and consignees of the same in New Orleans, who would agree to accept, and thereupon give permits for the shipment of the cotton, and stamp the same, as if the tax were paid; that the commercial firm of A. Miltenberger & Co., domiciled in New Orleans, La., commission merchants and cotton factors, composed of Alphonse Miltenberger and Gustave Miltenberger, on the 26th day of October, 1866, wrote a letter to C. F. Caruthers & Co., a commercial firm domiciled at Osyka, Mississippi, cotton factors and shippers of cotton, in and by which letter they promised and bound themselves as follows: "We have no objection to your drafting on us in payment of the internal-revenue tax on cotton shipped to us. Your drafts for same will therefore be duly honored." This was in answer to the following inquiry from said Caruthers & Co., under date of 24th October, 1866:

2 "Please to inform us whether it would suit you if we were to give a draft on you for the internal-revenue tax, the collector here preferring same instead of the money." Upon the faith of this promise to Caruthers & Co. by defendants A. Miltenberger & Co., repeated in defendants' subsequent letter of date October 30th, 1866, which was communicated to petitioner's deputy, W. M. Curtis, then collecting for petitioner the internal-revenue tax in Pike County, said W. M. Curtis, as such deputy collector, received from said C. F. Caruthers & Co. their drafts upon said A. Miltenberger & Co., as below set forth, particularly, for taxes due for internal revenue to the United States on cotton shipped and consigned by said C. F. Caruthers & Co. to said A. Miltenberger & Co., and granted permits for shipment and removal of said cotton, and stamped the same as if the tax thereon was paid by said drafts, to wit:

"One draft, dated 27th October, 1866, at ten days after date, to the order of W'm M. Curtis, dep'ty col. of internal-revenue tax, for one thousand dollars.

"One draft, dated 10th November, 1866, at sight, to the order

3 of W. M. Curtis, deputy collector of internal-revenue tax, five hundred dollars.

"One draft, dated Dec. 3d, 1866, at sight, to the order of W'm M. Curtis, deputy collector, for one hundred and forty dollars.

"One draft, dated Dec. 15th, 1866, at sight, to the order of W'm M. Curtis, deputy collector, for five hundred dollars.

"One draft, dated Dec. 24th, 1866, at sight, to the order of W'm M. Curtis, deputy collector, for two hundred and fifty dollars.

"And one draft, dated Jan. 28, 1867, at sight, to the order of W'm M. Curtis, deputy collector, for four hundred dollars."

All of said drafts have been endorsed by W. M. Curtis, the payee, and are filed with and as a part of this petition for reference, marked A, B, C, D, E, F. The aggregate amount of the same, to wit, the sum of two thousand seven hundred and ninety dollars, was the amount due for taxes for internal revenue on cotton shipped and consigned to said defendants by C. F. Caruthers & Co. from the collection district aforesaid, on which the said tax was not otherwise paid than by said drafts.

Petitioner alleges that said defendants have violated their said
5 promise and agreement, and have not honored the said drafts, nor any of them, but have failed and refused, and still refuse, to do so, although amicable demand has been made; and petitioner has suffered damage thereby to the amount of two thousand seven hundred and ninety dollars, the amount of tax as aforesaid, and twenty-one dollars costs of protest, &c., and legal interest from the maturity of said drafts, respectively, till paid.

They therefore pray for citations, and, after due proceedings, that they have judgment against defendants, A. Miltenberger and G. Miltenberger, in solido, for said sum of two thousand seven hundred and ninety dollars, with legal interest as above, and twenty-one dollars, costs of protest; and for general and equitable relief, &c.

BONNER & GOODE,
Pl'ff's Att'ys.

I will be security for clerk's and sheriff's costs.

C. STEELE,
Cor. Common & New Levee.

6 *Document A, annexed to petition.*

[Int. rev. stamp.]

$1,000.] OSYKA, 27 *October*, 1866.

Ten days after sight, pay to the order of W'm M. Curtis, dep'ty col. of internal revenue tax, one thousand dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & CO.,
New Orleans.

(Endorsed:) W. M. Curtiss.

[Original stamped 25c.]

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest, be it known that, on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard & Steele, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said draft to the drawees, at their office in this city, and de-
7 manded payment thereof, and was answered the same would not be paid for want of funds of the drawers.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY SEAL.] CHA'S STRINGER,
Notary Public.

[Int. rev. stamp.]

8 $1,000.] OSYKA, 27 *October*, 1866.

Ten days after date, pay to the order of W'm M. Curtis, dep'ty col. of internal-revenue tax, one thousand dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtis.

Document B, annexed to petition.

[Int. rev. stamp.]

500.] OSYKA, 10*th November*, 1866.

At sight, pay to the order of Mr. W. M. Curtis, deputy collector of internal revenue tax, the sum of five hundred dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtiss.

[Original stamped 25c.]

STATE OF LOUISIANA,
City of New Orleans:

9 By this public instrument of protest be it known that, on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard &, Steel, holder' of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said draft to the drawees, at their office in this city, and demanded payment thereof, and was answered the same would not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

10 In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY'S SEAL.] CHA'S STRINGER,
Notary Public.

[Int. rev. stamp.]

$500.] OSYKA, 10*th November*, 1866.

At sight, pay to the order of Mr. W. M. Curtis, deputy collector of internal revenue tax, the sum of five hundred dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Mess. A. MILTENBERGER & Co.,
New Orleans.

(Endorsed:) W'm Curtis.

Document C, annexed to petition.

[Int. rev. stamp.]

$140.00] OSYKA, MISS., *Dec.* 3, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, one hundred and forty dollar*d*, for value received, and charge the same to a'c. of—

Your ob't serv'ts, C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

11 [Original stamped 25c.]

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that, on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard and Steel, holder' of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said draft to the drawees, at their office in this city, and demanded payment thereof, and was answered the same would not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said draft.

12 Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY'S SEAL.] CHA'S STRINGER,
Notary Public.

[Int. rev. stamp]

$140.00.] OSYKA, MISS., *Dec.* 3, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, one hundred and forty dollars, for value received, and charge the same to a'c. of—

Your ob't. serv't,

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtis.

Document D, annexed to petition.

$500.00.] OSYKA, MISS., *Dec.* 15*th*, 1866.

13 [Int. rev. stamp.]

At sight, pay to the order of W. M. Curtis, dep'ty collector, five hundred dollars, for value received, and charge the same to ac. of—

Your ob't serv'ts,

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtiss.

[Original stamped 25 c.]

STATE of LOUISIANA, *City of New Orleans.*

By this public instrument of protest be it known that, on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard & Steel, holder' of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to the drawees, at their office in this city, and demanded payment thereof, and was answered the same would not be paid for want of funds of the drawers.

14 Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as well as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, or interest, suffered, or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY'S SEAL.] CHA'S STRINGER,
Notary Public.

[Int. rev. stamp]

$500.00.] OSYKA, MISS., *Dec.* 15*th*, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, five hundred dollars, for value received, and charge the same to ac. of—

Your ob't serv't,

C. F. CARUTHERS & CO.

To A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtis.

15 *Document E, annexed to petition.*

[Int. rev. stamp.]

$250.00.] OSYKA, MISS., *Dec.* 24, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, two hundred and fifty $\frac{00}{100}$ dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans.

(Endorsed:) W. M. Curtiss.

[Original stamped 25c.]

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that, on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard & Steele, holder' of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to the drawees, at their office in this city, and demanded payment thereof, and was refused.

16 Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest, suffered, or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY SEAL.] CHA'S STRINGER,
Notary Public.

[Int. rev. stamp.]

$250.00.] OSYKA, MISS., *Dec.* 24, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, two hundred and fifty dollars, value received, and charge the same to account of—

C. F. CARUTHERS & CO.

To Mess. A. MILTENBERGER & Co,
New Orleans.

(Endorsed:) W. M. Curtis.

17 *Document F, annexed to petition.*

$400.00.] *Osyka, Miss., Jan. 28th,* 1867.

At sight, pay to the order of Wm. M. Curtis, dep'ty collector, four hundred dollars, for value received, and charge the same to acc't of—

Your ob't serv'ts,

C. F. CARUTHERS & CO.

To Messrs. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtiss.

(Original stamped 25 c.)

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest, be it known, that on this eleventh day of April, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Pinckard and Steel, holder of the original draft whereof a true copy is on the reverse hereof written, I, Charles Stringer, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, pre-
18 sented said draft to the drawees, at their office in this city, and demanded payment thereof, and was answered the same would not be paid, for want of funds of the drawers.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said draft, as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges and interest, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Edwin F. Virgin and Edward F. Nelson, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day first above written.

[NOTARY SEAL.] CHA'S STRINGER,
Notary Public.

[Int. ev. stamp.]

19 $400 00.] OSYKA, MISS., *Jan. 28th*, 1867.

At sight, pay to the order of Wm. M. Curtis, dep'ty collector, four hundred dollars, for value received, and charge the same to ac. of—

Your ob't serv'ts,
C. F. CARUTHERS & CO.

To Mess. A. MILTENBERGER & Co.,
New Orleans, La.

(Endorsed:) W. M. Curtis.

Citation.—A. Miltenberger & Co.

State of Louisiana, fourth district court of New Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

A. MILTENBERGER & Co.:

You are hereby summoned to comply with the demand contained in the petition, a copy of which accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district
20 court of New Orleans, in ten days after the service hereof.

Witness the Honorable Paul E. Theard, judge of the said court the 31st day of Jan. in the year of our Lord 1868.

[SEAL.] J. F. DICK,
Deputy Clerk.

Sheriff's return.

Received, Feb. 11th, 1868, and, on the 12th day of the same month and year, served copy of the within citation and accompanying petition on

A. Miltenberger & Co., defendants herein, by leaving the same at their office, corner of Common and Carondelet streets, in the hands of Gustave Blache, their book-keeper, above 14 years of age, neither of the partners being present at the time of said service. All of which facts connected with this service I learned by interrogating the said Blache.

Ret. same day.

BEV. LACOSTE,
D'y Sh'ff.

21 *Answer.—Filed Feb. 20th*, 1868.

In the 4th district court, parish of New Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER, G. MILTENBERGER. } No. 20228.

The defendants appear, and, for answer to the petition of the plaintiff, say that, upon the facts stated in the petition of the plaintiff, there is no cause or ground for action against them, because they say that the laws of the United States do not authorize or permit the collectors of revenue to take or accept drafts for the payment of taxes, or any other thing, except the lawful money of the United States; but, on the contrary thereof, they particularly and explicitly prohibit the mode of collection set forth and described in the petition of the plaintiff, and the same is a violation of the acts of Congress in this behalf.

If the said proceedings were legal, then the United States and
22 not the plaintiff are the legal owners of the paper described in the petition, and the defendants except to the petition as an effort to collect drafts they were not authorized to take, and if so authorized not entitled to sue upon.

And upon this exception they pray a dismissal of the petition with costs for the def'ts. And, without wa'ving their exception, but relying on the same, and only in the case of the overruling thereof, they further answer that, on the 24th Octo., 1866, the firm of C. F. Caruthers & Co. wrote to the defendants as follows: "Please to inform us whether it would suit you if we were to give a draft on you for the internal-revenue tax, the collector here prefering same instead of money." On the 26th we answered: "We have no objection to your drafting on us in payment of the internal-revenue tax shipped to us."

On the 24th of November a draft was drawn by C. F. Curtis, dep'y collector, for $387, which was paid 1st Dec.

On the 11th of March, 1867, another of same order' is paid, dated 15 Feb'y, 1867, for $250.

On or about the middle of April, 1867, when the defendants had
23 but one or two bales of cotton of C. F. Caruthers & Co., and their account was nearly balanced, the drafts sued upon were presented, drawn in October and Nov., 1866, and Feb'y, 1867. Having no funds, payment was refused and the drafts protested.

On the 19th, Cook writes to the defendants in relation to the same, and an answer was immediately given, and explaining the matter, and that Caruthers promises to arrange it. No further information was obtained of the matter until the 13th Jan'y of the present year, when the defendants are threatened with suit by Cook.

All the cotton shipped to the defendants was 168 bales of cotton, upon which the revenue tax was $1,428, upon which there has been paid by

drafts six hundred and thirty-seven, leaving but seven hundred and ninety-one dollars due by C. F. & Co. The defendants had no notice of the drafts which the plaintiff claims to hold until after the account of Caruthers & Co. was balanced and settled. The monthly returns of the collector should show the taxes levied and collected. The drafts are largely in excess of any shipments to the defendants.

24 Their non-presentment by Curtis or Cook, and the failure to give notice of them byCaruthers & Co., the time given to Caruthers & Co., and the violation of the act of Congress are facts relied on as a defence against this suit.

The defendants plead illegality, collusion, fraud, and want of interest in the plaintiff in bar of the action; and pray that for judgment in their favor; and that the plaintiff may pay the costs of suit.

CAMPBELL, SPOFFORD & CAMPBELL,
For Def'd'ts.

Motion for commission.—Filed March 12th, 1868.

Fourth district court.

E. G. COOK
vs.
A. MILTENBERGER & Co.

On motion of Bonner & Goode, counsel for pl'ff herein, and on suggesting to the court that the affidavit for commission has been

25 waived, it is ordered that a commission issue to John Beckham, esq., or any other justice of the peace of Pike Co., Miss., to take the testimony of M. M. Murray, D. H. Longmire, and W'm M. Curtis, witnesses for pl'ff, resident in said county, and that twenty days be allowed for the return thereof.

Commission & return.—Issued March 12, 1868.

Fourth district court of New Orleans, State of Louisiana, No. 20228.

To JOHN BICKHAM, Esq., or any other justice of the peace of Pike County, Miss., greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the fourth district court of New Orleans, wherein E. G. Cook is plaintiff and A. Miltenberger & Co. are defendants.

26 Witnesses: M. M. Murray, D. H. Longmire, W'm M. Curtis.

Therefore we desire you that, at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart, upon their respective corporal oaths, first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and cause the witnesses to sign the same; and when you shall so have taken them that you send the same, with this commission, closed up under your seal, to us in our fourth district court, in the city of New Orleans, without delay.

Witness the Honorable Paul E. Theard, judge of our said court, this 12 day of March, in the year of our Lord one thousand eight hundred

and sixty-eight, and in the 92d year of the Independence of the United States.

[SEAL.]

J. F. DICK,
Deputy Clerk.

27 EDWIN G. COOK *vs.* A. MILTENBERGER & Co. } No. 20228. 4th court.

Interrogatories to be propounded to M. M. Murray, Longmire, and W. M. Curtis, material witnesses for plaintiff, (and residents of Pike County, Mississippi,) which, with the answers, will be read in evidence on the trial of above cause.

Int'y 1st. What is your business and residence?

2. In what business were you engaged during the years 1866 & 1867—in whose employment, and in what capacity, and at what place?

3. Look at the drafts hereto attached, marked A, B, C, D, E, F, and say whether they are the genuine drafts of the drawers. If yea, state the consideration of them, and under what circumstances they were drawn, and by what authority or permission they were drawn upon defendants; and, if any such authority or permission was in writing, attach such writing, if practicable, to your answer hereto.

4th. Were or not said drafts given for U. S. int.-rev. tax on
28 cotton; and, if yea, was or not sufficient cotton shipped by the drawers of said drafts to defendants to produce the aggregate amount of said drafts in internal-revenue tax, at 3 cents per pound?

5th. State the number of bales of cotton shipped by C. F. Caruthers & Co. to A. Miltenberger & Co., in the cotton season of 1866, and winter and spring of 1867, and their weight; and state how, when, and where the U. S. int.-rev. tax thereon was paid, if paid at all; and how permits for the shipment of the cotton out of the State of Mississippi were procured, and from whom were they procured.

Int'y 6th. Were defendants advised by C. F. Caruthers & Co. of the drawing of said drafts and their amounts? If yea, when and how, and what did the defendants say or do touching the same?

Int. 7. State anything further you may know of benefit to plaintiff in this suit.

BONNER & GOODE,
Pl'ff's Att'ys.

29 Defendants, reserving all exceptions save those of form, propound the following cross-interrogatories:

Int. 1st. State the date of the authority or permission to draw upon defendants, and when was that authority received by C. F. Caruthers & Co.

Int. 2nd. State the number of bales of cotton shipped by C. F. Caruthers & Co. to defendants from the day the authority or permission to dray was received by C. F. Caruthers & Co.

Int. 3d. Give all the marks of the cotton shipped, and dates of the shipments, stating the cotton upon which the 3 per cent. internal-revenue tax was paid and drawn for, and the cotton upon which said tax was not paid.

Int. 4th. How are you related or connected to Edwin G. Cook, the plaintiff?

CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

Affidavit waived.

CAMPBELL, SPOFFORD & CAMPBELL.

30 THE STATE OF MISSISSIPPI, *Pike County:*

Be it known that I, John Bickham, a justice of the peace in and for said county, pursuant to the commission annexed, issued out of the fourth district court of New Orleans, State of Louisiana, wherein E. G. Cook is plaintiff, and A. Miltenberger & Co. are defendants, have, at Osyka, on this the 18th day of April, A. D. 1868, caused M. M. Murray, D. H. Longmire, and W'm M. Curtis, witnesses, to come before me, and they being of full age, and being by me first duly sworn to testify truly to the interrogatories and cross-interrogatories appended to the commission.

W'M M. CURTIS testifies as follows:

To int. 1st. I am with my mother on a small farm in Crystal Springs, Miss.

To int. 2nd. I was deputy collector for Mr. Cook for this county.

To int. 3d. They were handed to me by Mr. Longmire as such. They were handed to me by Mr. Longmire in consideration of the tax on cotton shipped by that homse.

31 To int. 4th. They were handed to me by Mr. Longmire as such. I do not know whether much cotton was shipped by the drawers of said drafts.

To int. 5. I do not how much C. F. Caruthers & Co. to Miltenberger & Co. or their weight. The drafts A, B, C, D, E, & F, were taken in consideration of the tax. Permits were obtained from me through the agency of Mr. Longmire.

To int. 6th. I cannot say.

To int. 7th. I can state nothing further.

To cross-int. 1st. I do not know.

To cross-int. 2d. I do not know.

To cross-int. 3d. I cannot tell anything about it.

To cross-int. 4th. Brother-in-law.

W. M. CURTIS.

Sworn to and subscribed before me this 18th day of April, A. D. 1868.
JOHN BICKHAM, *J. P.*

DAVIS H. LONGMIRE sworn, answers as follows:

32 To int. 1st. A dry-goods merchant at Osyka, Pike Co., Miss.

To int. 2d. In the mercantile business, under my own employment, in the town of Osyka, Miss.

To int. 3d. The drafts are genuine. Those that I have received from the house of C. F. Caruthers & Co., they were given to me by these parties for the permits that were signed W'm M. Curtis, dep'ty col., and that the revenue was not paid to me by the said C. F. Caruthers & Co. in cash for these amounts for which these drafts call for. I do not know what authority that C. F. Caruthers & Co. had to draw said drafts on Mess. A. Miltenberger & Co.

To int. 4th. The drafts were given for internal-revenue tax on cotton. I do not know whether or not there *were* cotton sufficient shipped by the above parties *or not* to pay the said drafts.

To int. 5th. I cannot say how many bales of cotton were shipped by C. F. Caruthers & Co., nor I don't know the weights of the bales. The drafts were taken in consideration for said tax. The permits
33 were furnished to me by Mr. W'm M. Curtis, deputy col., to remove cotton from Osyka to New Orleans.

To int. 6th. I do not know anything about it.

To int. 7th. I believe that it was almost a universal practice for the consignees to pay the tax on cotton by drafts drawn on the consignors in New Orleans.

To cross int. 1st. I do not know.

To cross-int. 2nd. I do not know.

To cross-int. 3d. The drafts represents the am'ts of internal revenue at 3c. per pound on cotton shipped by Messrs. C. F. Caruthers & Co. to A. Miltenberger & Co., at the time they were drawn, or preceeding. The drafts were not given for anything else.

To cross-int. 4th. No relation whatever.

D. H. LONGMIRE.

Sworn to and subscribed before me this 18 day of April, A. D. 1868.

JOHN BICKHAM, *J. P.*

M. M. MURRAY, being duly sworn, answers to direct interrogatories:

34 To int. 1st. Book-keeper or clerk, at Osyka, Miss.

To int. 2nd. Book-keeper, Osyka, Miss., in the employment of C. F. Caruthers & Co.

To int. 3d. They are. The consideration was permits to ship cotton, signed by W. M. Curtis, dep't collector, for E. G. Cook. The circumstances were that W. M. Curtis, dep't collector, agreed to take them instead of the money, by written authority.

To int. 4th. They were. There was.

To int. 5th. About two hundred and fifty bales; weight unknown. It was never paid with money, but their drafts, given according to their respective dates, were intended to direct the consignee in New Orleans to pay. From W. M. Curtis, dep't collector, through D. H. Longmire, his ag't, at Osyka, Miss.

To int. 6th. They were, at the time of the drawing, by letters. They promised to pay the drafts on presentation.

To int. 7th. It was the universal practice, at the date of those drafts, for the consignees in New Orleans to pay the internal-revenue tax on cotton, as made known by drafts of the shippers.

35 To cross-int. 1st. In the fall of 1866.

To cross-int. 2nd. Cannot say positively. Believe it to approximate two hundred bales.

To cross-int. 3d. I cannot do it from memory.

To cross-int. 4th. Not at all.

M. M. MURRAY.

Sworn to and subscribed before me this 18th day of April, A. D. 1869.

JOHN BICKHAM, *J. P.*

THE STATE OF MISSISSIPPI,
Pike County, ss:

I, John Bickham, a justice of the peace in and for said county, do hereby certify that the above and foregoing depositions was taken before me at the place and on the day named in the caption, and that the answers of the witnesses on their oaths, were written by themselves, and in my presence: that I caused them to sign the answers; that I am not of counsel for either party, or related to either, or interested in the event of the case, and hereto close the same.

36 Given under my seal and signature official this 18th day of April, A. D. 1868.

JOHN BICKHAM, *J. P.* [SEAL.]

Continuance.

Fourth district court for the parish of Orleans.

MONDAY, *April 6th*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

This case was continued by preference.

Order for delay.—Filed 20th April, 1868.

Fourth district court.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

37 On motion of Bonner & Goode, att'y's for pl't'ffs, and it appearing to the court that the commission issued in this cause on the day of March last to of Osyka, Missi., to take the depositions of M. M. Murray and others, witnesses for plaintiff, has not yet been returned, it is ordered that the further period of fourteen days be granted for the execution and return thereof.

Continuance.

Fourth district court.

MONDAY, *April 20th*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

This case was continued by preference.

38 *Rule to admit testimony.—Filed April 22*, 1868.

In fourth court.

EDWIN G. COOK
vs
A. MILTENBERGER & Co. } No. 20228.

On motion of Bonner & Goode, of counsel for plaintiff, and it appearing to the court that the commission heretofore issued to take the depositions of *W.* M. Murray and others at Osyka, Miss., has been returned executed and the depositions are now on file, it is ordered by the court that defendants show cause, and on the 28th day of April, 1868, at 11 a. m., why said depositions should not be admitted in evidence on the trial of this cause.

Sheriff's return.

Received, Apr. 24th, 1868, and, on the 25th day of the same month and year, served copy of the within motion and order on Mr.
39 Spofford, att'y for defendants.
Ret. same day.

J. G. ROBERT,
D'y Sh'ff.

Motion & order.—Filed April 28th, 1868.

In fourth court.

EDWIN G. COOK,
vs.
A. MILTENBERGER & CO. } No. 20228.

On motion of Campbell, Spofford and Campbell, of counsel for defendants, and on showing the court that the production by plaintiff of his official monthly returns, (or true copies thereof,) of internal-revenue taxes on cotton, for the months of October, November, and December, 1866, and January, 1867, are necessary to aid the defendants make their defense:

It is ordered that said plaintiff do produce the same in court on or before Monday, the 4th May, at 11 o'clock, a. m.

Sheriff's return.

Received, April 29th, 1868, and, on the 30th day of the same month and year, served copy of the within motion and order on Edwin G. Cook, plaintiff herein, through Mr. Bonner, one of his attorneys, who accepted service of the same.
40 Ret. same day.

BEV. LACOSTE,
D'y Sh'ff.

Rule absolute.

Fourth district court.

TUESDAY, *April 28th*, 1865.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & CO. } No. 20228.

The rule herein taken on the 22d inst., came on for trial this day—Bonner & Goode for plaintiff in rule; Fenner & Spofford for
41 defendant therein—when the court considering the law and pleadings:

It is ordered that said rule be made absolute, and that the depositions of the witnesses therein named, taken under commission herein, be admitted as evidence on the trial of this cause.

Motion & order.—Filed April 30th, 1868.

Fourth district court of New Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & CO. } No. 20228.

On motion of Bonner & Goode, of counsel for plaintiff in the above entitled cause, and on suggesting to the court that C. F. Caruthers has certain letters and copies of letters in his possession which are material to plaintiff:

It is ordered that the said C. F. Caruthers produce in court, on the trial of this case, Monday, the 4th of May, 1868, for the use of
42 pl'ff, the letter book of C. F. Caruthers & Co., showing the contents of their letters written to A. Miltenberger & Co., for the purpose of getting authority from said Miltenberger & Co. to draw drafts on them for payment of internal-revenue tax on cotton to be shipped to them, together with the notices given by Caruthers & Co. of the drawing of the several drafts, dated respectively 27th Oct., 1866; 10th Nov., 1866; 3d, 15th, & 24th Dec., 1866, and 28th Jan., 1867. That said C. F. Caruthers be further ordered to produce the letters from A. Miltenberger & Co., under dates of 26th & 30th Oct., 1866, and all their other letters acknowledging receipt of cotton from dates 24th Oct., 1866, to 1st March, 1867, and all other letters in his possession from A. Miltenberger & Co. bearing on the subject-matter of this suit, written prior to March, 1867.

Sheriff's return.

Received, April 30th, 1868, and on the 1st day of May, 1868,
43 served copy of the within motion and order on C. F. Caruthers in person.
Ret. same day.

BEV. LACOSTE, *D'y Sh'ff.*

Continuance.

Fourth district court.

MONDAY, *May 4th*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & CO. } No. 20228

This case was continued by preference.

Continuance.

Fourth district court.

MONDAY, *May* 18, 1868.

Present, Honorable Paul E. Theard, judge.

44 EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

This cause came on this day—B. & G. for plaintiff; C. S. & C. for defendants—when, after hearing pleadings, said cause was left open and continued to to-morrow, the 19th instant, at 11 o'clock a. m., by preference.

Testimony & note evidence.—Filed May 19, 1868.

Fourth district court.

TUESDAY, *May 19th*, 1868.

Present, Honorable Paul E. Theard, judge.

E. G. COOK
vs.
MILTENBERGER & Co. } No. 20228.

C. F. CARUTHERS sworn for plaintiff:

I have examined the six drafts sued upon. I find that the
45 genuine signature of C. F. Caruthers & Co. is attached to all of said drafts. Three are signed by myself, and three by my partner.

I have brought the letters called for by the subpœna duces tecum.

E. G. COOK sworn for plaintiff.

I am the plaintiff in this case.

I have examined the endorsements of W. M. Curtis on the six drafts sued on. The endorsements are, I think, genuine.

I am collector of internal revenue in Mississippi; W. M. Curtis was my deputy at the time the drafts were drawn.

I have the advertisements, alluded to in the petition, which I now produce.

New Orleans is designated as the only place of deposit for revenue collected in my district.

My object in resorting to these arrangements was to further my
46 interest. I was not sanctioned by the Treasury, but I was authorized to avail myself of exchange. It was dangerous for me to carry money about me in Mississippi, and, as a matter of safety, I received no money but took drafts on the factors, all of which with these exceptions and one or two others, have been paid. I collected $500,000 or more in this manner. I collected it—nearly all of the revenue—in this way. I think that I lose less in this way than if I received the money. I concluded this was a safer mode than any other I could adopt. I consulted my friends and all interested, and concluded to adopt this method.

I certainly would have not permitted this cotton to be shipped had not the promise of defendants, to accept the drafts of Caruthers & Co., been made known to me.

When these drafts were drawn, the cotton was treated as though I

had received the money. These were my instructions. The tax
47 on this cotton was returned as having been paid, and the amount charged to me at Washington City officially. Within a month from the time the cotton is shipped, the return is made by the assessor and the amount charged to me officially.

By the drawing of those drafts the internal revenue was considered as paid, and the cotton was marked as paid. Cotton could not be removed without the tax was paid first, or unless it was shipped in bond.

I am responsible to the Government for the amount of these drafts. I am responsible for the action of my deputy. I authorized my deputy to make this arrangement in all cases. It was so done. I did this at my own risk.

In shipping my money to the depository, I was authorized to make use of exchange. I would not accept any draft unless it was on a good house, and I knew the cotton had gone forward to the house drawn on.

48 My idea was that the cotton going made the draft good. I was authorized to exercise a great deal of discretion.

Cross-examined:

I am responsible to the United States in the sense of being bound by these drafts, but I am bound for that which is the consideration for the notes.

The notes I am not bound for, but I am bound for the consideration for them.

If I lose in such transactions in buying exchange, &c., if I am governed by a sound discretion, I shall try to get the Government to release me.

I am all the time sending forward my collections. I am bound for all mistakes, erroneous additions, &c.

I am released now for the time being, this being left in abeyance, to give me a chance to get the money from *from* the tax-payers. There is at least 5% on over $1,000,000 yet unpaid.

The system is now changed.

49 I am now authorized to have a special travelling deputy to collect from my other deputies. He is appointed by me. This deputy then makes the deposits.

Plaintiff offers in evidence:

* The six drafts sued on.
* The six protests thereof.
The two letters, marked G & H.
The advertisements, " " J."
The four letters, " K, L, M, & N.

Letter (G,) offered in testimony.—Filed May 19th, 1868.

P'r Jackson R'l R'd.]

NEW ORLEANS, *Oct'r* 26, 1866.

Messrs. C. F. CARUTHERS, & Co., *Osyka.*

DEAR SIRS: We had the pleasure yesterday remitting acc't sales of cotton sold for your acc't, and for acc't of your Mr. W. C. Harrell, and other papers, all of which we trust duly reached you. Your shipment of 17 bales cotton, viz, 6 B. for your acc't and 11 B. for

* Annexed to petition.

50 acc't of Mr. H. M. Lea, has arrived, and is receiving usual attention.

We beg to acknowledge the receipt, a few moments ago, of your esteemed favors of the 24th and 25th, both of which came to hand together, the latter enclosing B. L. and int.-rev. papers for 14 bales of cotton for your acc't, which will have our good care on arrival. We take good note of your remarks about the quality of this shipment.

We have no objection to your drafting on us in payment of the internal-revenue tax on cotton shipped to us. Your drafts for same will therefore be duly honored.

In conformity with your request, we beg to hand you herewith the sum of one thousand dollars, ($1,000,) as an advance on cotton.

Our order-clerk is out attending to your order for one cask of clear-side bacon and one cask shoulders; also, to the gin-band. He will endeavor to have those articles forwarded by to-day's train, but
51 it is so late in the day that we doubt whether they will go before to-morrow.

Our cotton market, we regret to say, continues unsettled and depressed, owing to unfavorable advices from New York. We will write again to-morrow.

In haste. Yours, very truly.

A. MILTENBERGER & CO.,
P. pro. E. MILTENBERGER.

P. S.—We forwarded to your care, by yesterday's mail, letters enclosing ac. sales to our friends Messrs. Lea, McKnight, Bates, &c.

Letter (H,) offered in evidence.—Filed May 19th, 1868.

NEW ORLEANS, *Oct'r 30th*, 1866.

Messrs. C. F. CARUTHERS & CO., *Osyka.*

DEAR SIRS: Confirming our respects of the 27th inst., we beg to-day to acknowledge the receipt of your favor of same date, the contents of which have our good attention.

52 In accordance with your request, we send you herewith the sum of two hundred and eighty dollars, ($280,) in gold, purchased at 1.48, amounting in currency to $414.40, to debit of your acc't. This remittance goes by "express co.," and per same conveyance we send to your care, as per your instructions, the balance in favor of Mr. Ja's E. Lea, and of estate of Mr. J. G. Lea, with a letter to Mr. Lea advising same.

You seem to have overlooked that portion of our letter of the 20th inst. informing you, in reply to your inquiry, as to whether you could draft on us for amount of int.-rev. tax on your shipments of cotton to us; that we had no objections to your so doing. It is, however, a matter of no consequence at present, as you have drawn on us for $1,000 at 10 days for same object. Said draft will be honored at maturity.

Your last shipment' of 14 B. and 9 B. cotton have come to hand, and are receiving our usual attention. By to-day's train we forward the bale of bagging ordered, as also the book of blank draw receipts.

53 Please find our bill for same herein enclosed.

We are much gratified to learn that Mr. Ja's E. Lea has expressed himself as being highly pleased with our management of his affairs.

Our cotton market is active at last week's prices, viz: Ordinary, 30 @ 31; good ordinary, 33 @ 34; low midd'g, 35 @ 36; middling, 37 @ 38.

We have your cotton on sale, and hope to be able to dispose of it

soon. So far, however, we have not been able to obtain the price we are asking.

We remain, d'r sirs, yours very truly,

A. MILTENBERGER & CO.
P. pro. E. MILTENBERGER.

P. S.—We forgot to say, in connexion with our remittance of this day, p'r "express co.," that we will pay, as requested, charges of same on your remittance, but Mr. Lea's acc't being closed, you will please pay charges on his parcel and collect same from him.

A. M. & CO.
P. p. E. M.

54 *Advertisement (J.,) offered in evidence.—Filed May 19th, 1868.*

Cotton tax, U. S. internal revenue.

COLLECTOR'S OFFICE, 1ST DIST. OF MISS.,
Hazlehurst, September 11, 1866.

The regulations of the Commissioner of Internal Revenue, designating certain days and places of shipping cotton from this district, have been received at this office.

Pursuant to which, and the provisions of section 3 of the act of the 13th of July, 1866, I now make known that cotton may be brought to the usual shipping-points on the Mississippi River from Grand Gulf to Fort Adams; on the New Orleans and Jackson Railroad, from Crystal Springs to Osyka; and on the Mobile and Ohio Railroad, from Red Bluff to State-line station, at any time, as there will be deputy collectors at the most important points daily, if necessary, to issue the necessary permits, who will also attend, at intermediate places, when notified to do so.

There need be no change of shipping place, nor delay or
55 hurry as to time. Neither will the tax or official charges be greater at these points than if collected in New Orleans. As the revenue is to be deposited in New Orleans City, it may suit, if consignees in that city will so recognize a draft of the shipper for this tax as to make the amount available at the designated depository. Some have done so. Others may, and thus afford facilities to the customers.

E. G. COOK,
Collector 1st District of Mississippi.

Se123td1tw.

Letter K, (offered in evidence.)—Filed May 19th, 1868.

P'r Jackson R'lr'd.]

NEW ORLEANS, *Nov. 13th*, 1866.

Messrs. C. F. CARUTHERS & CO., *Osyka.*

DEAR SIRS: We are in receipt of your esteemed favors of the 9th, 10th, and 12th inst., the contents of which are duly noted.

56 Please accept our thanks for b. l. and int.-rev. papers for your last shipment of 5 b. c. from Osyka, and b. l. for 1 b. c. from Kirksville; the latter for acc't of Capt. John C. LaNour. These cottons have not yet arrived. The 5 bales from Kirksville have come to hand, and are receiving our usual attention. The 5 B. "Jenkins" have also arrived. We take good note that the int.-rev. tax on cotton shipped from Kirksville *it* to be paid here.

Your draft for $500 in favor of W. M. Curtis, deputy collector, will be honored on presentation.

By to-day's train we ship to your care, and as per your order, one barrel of flour, for acc't of Mr. H. M. Lea. Not having been able to find the "Aramant's" brand, which you call for, we send in place a barrel from the "Verandah" Mills, which, we trust, will suit as well.

We regret to say that our cotton-market continues very much depressed, and too unsettled to admit of quotations being given. We have the pleasure of seeing daily your Mr. Caruthers, and to
57 consult with him as to the disposal of the cotton we have on hand for your acc't.

We omitted to advise in our last the payment of your note on the 8th inst., order J. C. Morris, for $168.58, as per your instructions.

Hoping to be able to transmit in our next more favorable accounts of our cotton market, we remain, d'r sirs, yours, very truly,

A. MILTENBERGER & CO.,
P. pro. E. MILTENBERGER.

(Indorsed:) 1866. A. Miltenberger & Co., 12 November. Received 14 d'y. Answered 16 d'y.

Letter L, offered in evidence.—Filed May 19, 1868.

NEW ORLEANS, *Dec.* 18, 1866.

Messrs. C. F. CARUTHERS & CO., *Osyka.*

DEAR SIRS: We have the pleasure to acknowledge the receipt of your favors of the 13th, 14th, & 15th inst., the former enclosing B. L. and internal-revenue papers for 5 bales cotton which have come to hand, and calling for some oats and corn, which articles were
58 duly forwarded, and for which we beg to-day to enclose herein our bill.

We were glad to learn by your favor of the 14th that our remittance of $200 duly reached you, and also that our sale of your 62 bales of cotton proved satisfactory. We beg to-day to hand you herewith the acc't-sales of the same, as follows:

37	bales	cotton,	producing,	net	$4,292 77
24	"	"	"	"	2,843 14
1	"	"	"	"	43 28

Which amounts have been placed to the credit of your acc't. We trust the within ac.-sales will prove correct and satisfactory.

Your shipment of 13 bales cotton, for which you enclosed B. L. in yours of the 14th, has not yet arrived. We take good note of your instructions to sell the Hamp. Wall cotton immediately.

Your draft for $500, order W. M. Curtis, deputy collector, will be honored on presentation.

Our cotton-market, though not very active to-day on acc't of the unfavorable condition of the weather, probably, is, nevertheless,
59 very steady; the news from the Liverpool market being favorable, has given confidence to factors, who are asking higher prices than those ruling yesterday, which were—

Ord'n'y, 25½@26½; good do., 27½@28½; low midd'g, 29½@30½; midd'g, 31½.

Hoping to be able to answer in our next still further favorable acc'ts of the market, we remain, d'r sirs, yours, very truly,

A. MILTENBERGER & CO.,
P. pro. E. MILTENBERGER.

P. S. Our Mr. Alphonse M. returns his sincere thanks to your Mr. Caruthers for his very acceptable present in the shape of two magnificent turkeys. Those sent to Messrs. Bowen and Garner and J. F. Caruthers were duly delivered.

Yours,

A. M. & CO.,
P. pro. E. M.

Letter "M," offered in evidence.

NEW ORLEANS, *Feb. 2d*, 1867.

Messrs. C. F. CARUTHERS & CO., *Osyka.*

60 DEAR SIRS: Referring to our respects of the 30th ulto. advising the sale of 18 bales cotton for your acc't, we beg to-day to hand you herewith the acc't-sales of same, as follows:

4	bales,	F. J. W.,	30c.,	net	proceeds	$420 03
1	"	J. S.,	31½,	"	"	121 20
1	"	Jake,	31½,	"	"	113 20
1	"	Ben,	31½,	"	"	143 10
2	"	Wash.,	31,	"	"	227 11
2	"	G. F. W.,	30½,	"	"	252 06
1	"	M. B. C.,	31,	"	"	108 09
1	"	Jane,	30½,	"	"	98
1	"	T. P. H.,	31½,	"	"	109 91
1	"	Hone,	31¼,	"	"	129 89
1	"	J. A. W.,	30½,	"	"	103 90
1	"	M. G. F.,	31½,	"	"	241 87
1	"		30¼,			

Which different amounts have been placed to the credit of your account.

We beg, also, to hand you herewith the acc't-sales of Mrs. A. M. Jennings, two bales of cotton, the proceeds of which, say $225.43, we have placed to the credit of her account. We will be pleased to learn that all the within acc't-sales have proved correct and satisfactory.

61 We sold the above cotton at the right time, we think, our market having since been dull and unsettled, at a decline of ½ @ ¾ p'r lb.

We have the pleasure to acknowledge the receipt of your esteemed favors of the 30th and 31st ult'o and 1st ins't, with B. L. and int. rev. papers for (3) three bales of cotton for your account, for which we return thanks. Your draft for $400 in favor of W'm M. Curtis, dep'ty coll'r, will be honored on presentation.

In accordance with your instructions we forward to your care, and for account of Mr. H. M. Lea, 100 English fire-proof brick and ten bushels black oats, for which we enclose herein our bill.

We remain, d'r sirs, yours, very truly,

A. MILTENBERGER & CO.
P. pro. E. MILTENBERGER.

Letter N, (offered in evidence.)—Filed May 19th, 1868.

NEW ORLEANS, *Feb.* 23, 1867.

62 Messrs. C. F. CARUTHERS & Co., *Osyka.*

DEAR SIRS: Your favors of 16th and 19th inst. are at hand, the former advising your draft of $250 in favor of W'm M. Curtis, dep'ty collector, which will be honored on presentation, and the latter enclosing B. L'g and int.-rev. permit for two bales of cotton for your account. This cotton has arrived, but we have not as yet the samples on our table.

Seeing no prospect of any advance in prices, in the face of our continued heavy receipts and unfavorable advices from the New York and Liverpool markets, we have thought best to take advantage of the good inquiry which has sprung up to-day, to sell your eleven (11) bales of cotton on hand, as also Mes. W. H. H. Foster's one (1) bale, as follows:

A. B., 2 b.,.....@ 29c. B. F. A., 5 b. ..... { 3—28½ / 2—30
A. Y., 1 " ..... 30c.
Duck 3 " ..... 29c. Mr. Foster, 1 b., W. H. F. ...30c.

All of which will, we hope, prove satisfactory.

63 Craving reference to the annexed price current for particulars of our market for the present week,

We remain, d'r sirs, yours, very truly,

A. MILTENBERGER & CO.
P. pro. E. MILTENBERGER.

Continuance.

Fourth district court.

TUESDAY, *May 19th*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

This cause came on for trial this day—B. & G. for pl'ff; C. S. & C. for def'ts—when, after hearing evidence, said cause was left open and continued to Monday, 1st June next.

64 *Order.—Filed May 27th*, 1868.

Fourth district court of New Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

On motion of Bonner & Goode, att'ys for plaintiff, and on suggesting to the court that the defendants, A. Miltenberger & Co., have certain letters in their possession, the production of which is material to pl'ff, it is ordered that they produce in court, on Monday, June 1st, and such other times as this case may be fixed for trial, the following letters, written to them by Caruthers & Co., and the receipt whereof they have acknowledged, to wit:

Letters dated 24th & 25th Oct., 1866, asking permission to draw in payment of internal revenue. Also, letter of about same date, advising you of draft for internal revenue, for $1000, at ten days' sight, which you promised to honor in yours of Oct. 30th, 1866. Also, letters
65 dated 9th, 10th, & 12th Nov., 1866, and acknowledged Nov. 13th, 1866. Also, letters of 14th, 15th, & 16th Dec.; ans. 18th Dec., 1866. Also, letters of 30th and 31st Jan'y, 1867; ans. Feb. 2, 1867; letters dated 16th and 19th Feb., 1867; ans. 23d Feb., 1867.

Sheriff's return.

Received, May 29th, 1868, and, on the 30th day of the same month and year, served copy of the within motion, and order to produce on A. Miltenberger & Co., defendants herein, through Ernest Miltenberger, who told me that he was one of the firm.

Ret. same day.

BEV. LACOSTE, *D'y Sh'ff.*

Testimony and note evidence.—Filed June 1st, 1868.

EDWIN G. COOK
vs.
A. MILTENBERGER & CO. } No. 20228.

66 E. G. COOK recalled.

Cross-examination continued:

I suppose I got a reply from defendants' to my letter to them.

Their letter is dated 22nd April, 1867. I think I received the letter marked O. from def'ts, but don't remember whether or not I did. It is the original received by me from def'd'ts.

After this I tried to make some arrangements with Caruthers. I offered to give a delay. I delayed the drafts before I presented them to defendants in order to favor them. I think Caruthers lived here. After letter marked "O" was received by me, Mr. Caruthers came to Hazelhurst to see me about it. One of his partners or clerk came with him.

I agreed to wait upon the debt to give them a chance. I agreed not to proceed against Miltenberger & Co., until fall; and if the drafts were paid in the mean time there would be no necessity of resorting to legal proceedings.

67 I don't think I had another interview with Caruthers until I saw him in court, about a month ago.

After the time of the extension had expired, that is, after I had waited as long a time as I supposed the parties involved could expect, I made a levy upon the assets of C. F. Caruthers & Co. This levy was made about 1st January, 1868. I decided, under that levy, that I had no right to proceed, so far as this claim was involved.

I levied to secure the indebtedness of Caruthers & Co., not what Miltenberger & Co owed me. Under the levy I found I could not sell the property levied on. I called on the sheriff of the county and the clerk of the house to give certificates, or to make an affidavit, that the property would not sell for what the creditors of the house offered to give to release it. They certified that public opinion was so much against it that the property would not sell for anything.

Having received this opinion I released the property to the
68 creditors for the amount they agreed to pay $1,500.00.

The assets were worth more than that—some little, I suppose; but parties that knew better than I did said that the goods would not sell for that. The levy was intended to embrace all the book-accounts of C. F. Caruthers & Co., but I don't know whether it did or not.

In-chief resumed:

I appropriated the $1,500 to the indebtedness of Caruthers & Co. This did not satisfy what Caruthers & Co., owed me. The whole amount including all these claims, of Caruthers & Co.'s indebtedness is about $7,000.00 on my books. They still owe me individually after having credited the $1,500, $1,500.00 more. I told Caruthers that I did not know whether any of this was right or not. I am legally bound for these amounts.

I never intentionally made any arrangements to release defts from these drafts. After the letter marked "O" I never entered into any arrangement to release defendants.

69 In-chief resumed:

I don't think the indebtedness of $7,000.00 includes any individual indebtedness of C. F. Caruthers.

FELIX LEGENDRE sworn for defendants:

I was a/c-sales clerk for defendants in 1866 & 1867. I have the books in court, from which I have drawn a list of the shipments of C. F. Caruthers & Co.

From the day we authorized Caruthers & Co. to draw on us—October, 1866, to April, 1867—we received 168 bales cotton from them.

I will draw off a statement from the books kept by me of the cotton. Pages 77 to 79 of the cotton-ledger show exactly the dates and number of bales received. I will furnish a transcript of these pages to-morrow.

Cross-examined:

The entries were made by me in 1866 and 1867. We keep other books also. We have a cotton-sales-book also. The books in court do
70 not show the weights. The document Y is a correct extract from my account-sales book.

I know the statement to be correct from the report of the U. S. int. rev. officer's report. Was not present at the weighing. We have a clerk who attends to the weighing. When the cotton came down it was weighed by the U. S. weigher, and on his weights we would pay the tax.

C. F. CARUTHERS sworn for defendant:

Being shown letter-book of Miltenberger & Co., and letter of 19th January, 1867, says: My firm, C. F. Caruthers & Co., received the original.

According to my recollection, this letter contains a true statement of our account with Miltenberger & Co. at this date. Will endeavor to find original letter, and send it to the court.

Myself and partner went up to see Mr. Cook on our own account, and not as agents of Miltenberger & Co.

Myself and partner admitted to Mr. Cook our inability to meet
71 the draft, and asked an extension of time. The time was granted until such time as we could make collections from the country, hoping to do so on the first receipts of cotton. The result was that we could not meet them, and the seizure was made to satisfy the actual assessment of about $4,800, as shown by drafts on Miltenberger & Co., and Boner & Garner.

I think the goods on hand were sold at $1,500 at private sale, as I was advised by the firm, I not being there. I think the property in the store, aside from the book-accounts, amounted to $2,200 or $2,300 by the invoices, and sold by the purchasers subsequently (Messrs. Alcus, Sheck & Antey) for some $1,100 and odd dollars. I mean the goods in the store.

The book-accounts will show between $15,000 and $18,000. I could not tell what proportion of this was good, from the fact that I did not know the parties, my partner having made the sales; but I suppose $6,000 or $8,000 was good.

72 Cook stated to me that there was an over-assessment of about $2,900.00 in error for which there were no returns shown in the office.

Cross-examined:

The drafts sued on were given at their dates, I presume. The cotton for which these drafts were given must have been shipped. I should say it was, and the internal revenue on the cotton amounted to about as much as the drafts. The cotton was all assessed before shipment at our weights less 20 pounds per bale, and marked paid, and the permit granted when shipped under this arrangement. The name of the house was not inserted, but the internal revenue officers knew where it was going to, and the internal revenue amounted to the amount of these drafts.

I think there was $100 or over in our favor at Miltenberger & Co.'s, according to the accounts rendered. I don't think that defendants
73 told me that I ought to pay these drafts. If they had paid them it would have brought me in debt to them for the amount of the drafts.

I know nothing, of my own knowledge, about the value of our book-accounts mentioned. It is a very difficult matter to collect money from the best men in the country. All that I know is that the assessments of revenue amounted to the amount of the drafts given besides the cash paid. There has been a claim made against me, individually, for over $2,900, for which I have made an application for abatement and forwarded to Mr. Cook.

Plaintiff offers in evidence—
The two letters marked "P" & "Q."
The three " " "R," "S," & "T."
The depositions taken under commission marked "U."
The letter referred to in the subpœna duces tecum, a copy of which is to be hereafter furnished.

Defendants offer in evidence—
The letter marked "O."
74 The " " "V," and the reply thereto, marked "O," as above stated, in connection therewith.
The two drafts marked "W" & "X."
The statement "Y."
Transcript from A. Miltenberger & Co.'s ledger, to be furnished to-morrow by witness Legendre, of cotton ac. of C. F. Caruthers, & Co.
Defendant offers original letter, of 19 January, 1867, in connection with testimony of C. F. Caruthers, marked "Z."

Letter "O," offered in evidence.—Filed June 1st, 1868.

NEW ORLEANS, *April* 22, 1867.

E. G. COOK, Esq.,
Collector 1st Dist., Miss., Hazlehurst, Miss.

DEAR SIR: We are this day in receipt of your letter of the 19th inst., relative to Messrs. C. F. Caruthers & Co.'s drafts.

We were under the impression that *none* of those drafts, which
75 were sight-drafts, had long since been paid by Messrs. Caruthers & Co., to whom we sent money at different times, a portion of which we thought was applied to the payment of the tax on the cotton shipped to us. This opinion was confirmed not only by the non-appearance of the drafts, but by Messrs. C. F. Caruthers & Co.'s acknowledgment of the correctness of the account current sent them at different times after the drawing of the drafts, and in which of course none of the drafts you hold were charged. We were consequently quite surprised when these drafts were presented to us the other day, and were compelled to decline honoring same, being without funds of the drawers.

We have seen Mr. Caruthers, who is in this city at present, on the subject. He has promised to write you by to-day's mail, and to go up to-morrow or next day and make arrangements for the payment of his firm's drafts. We regret exceedingly, we can assure you, this (to us) very unpleasant occurrence, and trust you will attach to us no blame therefor.

76 Hoping the above explanation will prove satisfactory, we are, sir, yours, very respectfully,

A. MILTENBERGER & CO.

Letter P, offered in evidence.—Filed June 1st, 1868.

OSYKA, 24*th October*, 1866.

Messrs. A. MILTENBERGER & Co.,
New Orleans.

DEAR SIRS: We had this pleasure yesterday, and would by the present request you to send us as soon as possible—

1 cask of clear side-bacon.

1 do. of shoulders; and, having exhausted all our funds, one thousand dollars currency—small bills.

We are happy to say that we have again a little lot of cotton for you ready for a shipment, say 14 bales, of which we will hand you
77 documents to-morrow. They consist of very fine quality and will, no doubt, please your eyes.

Please to inform us, whether it would suit you, if we were to give a draft on you for the internal-revenue tax, the collector here preferring same instead of the money. If you do not like this please accommodate us with $2,000 instead of the above-named one thousand.

Awaiting your answer by return of mail, we remain,
Yours, very truly.

C. F. CARUTHERS & CO.,
P. p. HALLERMANN.

Letter Q, (offered in evidence.)—Filed June 1st, 1868.

OSYKA, 25*th October*, 1866.

Messrs. A. MILTENBERGER & Co.,
New Orleans.

DEAR SIRS: Cofirming our respects of 23d & 24th inst., and, with none of your favors to reply to, we now beg to enclose b. l'd'g and in-

ternal-revenue papers for 14 b. cotton, recommending them to
78 your good care and attention, and not limiting you as to price, being aware that you will act for us as you would handle cotton belonging to you personally.

We still await your answer regarding the internal-revenue tax mentioned in our letter of yesterday, and hope to hear from you on this subject by to-morrow's mail.

We, to-day, had a call from our gin-friends, and we now beg to state that, if there is still no gin-band 44 feet long to be had, to send one 41 feet long, which will answer, although not as well.

Hoping that the present inactivity of your cotton market may soon be changed into more activity and with better figures, we remain dear sirs,

Yours, very truly.

C. F. CARUTHERS & CO.
W. HALLERMANN.

Letter R, (offered in evidence.)—Filed June 1st, 1868.

OSYKA, 10 *November*, 1868.

Messrs. A. MILTENBURGER & Co.

79 *New Orleans.*

DEAR SIRS: Confirming our respects of yesterday, we now have the pleasure to hand you b. l'd'g and internal-revenue papers for 5 b. cotton, hoping that you may he enabled to sell them at satisfactory and remunerative prices.

We feel much obliged for having taken the matter of delays in shipments from Kirksville into your hands, and we are glad to say that it has had some influence as we could ship our cotton from this place during the last few days without any trouble whatever. If we got always more cotton off in proper time there would be no need for keeping an open fire-insurance at these stations; but if those delays happen hereafter, we think it but prudent to do so, and you will converse with our senior, who intends paying you a visit on Sunday, on this subject. For payment of $250 to Messrs. Chambers and Latting, we have credited your account. Please accept our thanks for having effected the insurance on our house and stock.

80 The hickory chairs and the bale of bagging ordered, has reached us, and we have credited you the amount of same with $149.60. As mentioned already yesterday, we did not pay the tax on cotton shipped from Kirksville, (being Louisiana cotton,) so you will have to report these shipments to your collector there.

The 5 b. cotton, marked "Jenkins," have been shipped on the 6th inst., and will, no doubt, have reached you by this time. We, to-day, took the liberty of *valuing* on you $500, at sight, ac. W. H. Curtis, dep'ty collector of internal-revenue tax, which please honor when presented, debiting our account for it.

Your cotton market is at present in a very deplorable state, and we trust that you may soon be enabled to communicate better news. Referring to our senior's personal interview,

We remain, dear sirs, yours truly,

C. F. CARUTHERS & CO.

81 *Letter (S,) offered in evidence.—Filed June 1st, 1868.*

OSYKA, MISS., *Dec. 15th*, 1866.

Mess. A. MILTENBERGER & CO.,
New Orleans.

D'R SIRS: We have, to-day, drawn on you, at sight, in favor of W'm M. Curtis, dep'ty collector, for the sum of five hundred (500$) dollars, which please pay on presentation.

Yours, very truly,

C. F. CARUTHERS & CO.
P'r MURRAY.

Letter (T,) offered in evidence.—Filed June 1st, 1868.

OSYKA, MISS., *Jan.* 30, 1867.

Mess. A. MILTENBERGER & CO.,
New Orleans.

GENTLEMEN: Your favor of the 26th inst. is at hand—contents
82 noted. We were favored with a call from Mr. James E. Lea, on yesterday, in reference to the 2,000$ currency. He said he had rather you would hold it than to buy gold at the rate named.

Under date of the 28th inst., we have drawn on you, at sight, for four hundred dollars, in favor of W'm M. Curtis, dep'ty collector, which draft please pay on presentation.

Yours, very truly,

C. F. CARUTHERS & CO.
P'r MURRAY.

Letter (V,) offered in evidence.—Filed June 1st, 1868.

COLLECTOR'S OFFICE, 1ST DIST. MISS.,
Hazlehurst, April 19th, 1867.

Messrs. A. MILTENBERGER & CO.,
New Orleans.

GENTS: The drafts of Messrs. Caruthers & Co. having been protested, I enquire of them and learn that they were authorized to draw on your house.

83 I hope there is some mistake about this dishonor.

I have permitted a liberal policy on the part of my deputies, and your house is almost the only one refusing to pay. There can be no draft on your firm again in my district until this refusal to pay is explained satisfactorily.

Yours, respectfully,

E. G. COOK,
Col. 1st Dist., Miss.

You can see Mr. Caruthers at 37 Union st., New Orleans.

Document (W,) offered in evidence.—Filed June 1st, 1868.

$387.00.] OSYKA, MISS., *Nov.* 24, 1866.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, three hundred and eighty-seven dollars, for value received, and ch'g to ac.

Your ob't serv'ts,

C. F. CARUTHERS & CO.

To A. MILTENBERGER & CO.,
New Orleans, La.

[Int.-rev. stamp.]

84 *Document X.*

[Int.-rev. stamp.]

$250.00. | OSYKA, MISS., *Feb.* 15, 1867.

At sight, pay to the order of W'm M. Curtis, dep'ty collector, two hundred and fifty $\frac{00}{100}$ dollars, value received, and charge the same to account of—

C. F. CARUTHERS.

To A. MILTENBERGER & Co., *New Orleans.*

No. 4.]

Document Y, offered in evidence.—Filed June 1st, 1868.

P'd G. C. C. & C.:

	Lbs.		Lbs.		Lbs.
2 b. c....	877	10 b. c....	4,425	2 b. c.....	862
2 "	912	4 "	1,674	1 "	376
1 "	295	4 "	1,684	1 "	348
3 "	1,306	6 "	2,414	2 "	886
1 "	515	5 "	2,274	1 "	518
4 "	1,818	4 "	1,623	2 "	740
2 "	856	4 "	1,794	5 "	2,252
4 "	1,883	1 "	388	1 "	512
3 "	1,391	2 "	791	1 "	502
3 "	1,467	1 "	486	2 "	840
4 "	1,743	4 "	1,512	2 "	841
1 "	420	1 "	413		
5 "	2,138	1 "	368	117 "	51,895 lbs.
1 "	460	1 "	445		
2 "	935	1 "	376		3
5 "	2,383	1 "	495	1,556.85 12	
3 "	1,213	1 "	502	635.17 51	1,556.85
				921.68 12	over.

85 *Document Y.—Concluded.*

A. M. & Co.:

Lbs.	Lbs.	Lbs.	Total.
4..... 1,494	1..... 380	1..... 415	
2..... 1,020	1..... 201	3..... 1,166	51 b. c.—
1..... 440	4..... 1,629	4..... 1,802	21,139 lbs.
2..... 836	1..... 389	4..... 1,998	3
2 669	1..... 456	1.. ... 407	
2 842	10..... 4,189	1..... 500	635.17
1..... 365	2..... 733	3..... 1,268	

Letter Z, offered in evidence.—Filed June 1st, 1868.

NEW ORLEANS, *Jan'y* 19, 1867.

Messrs. C. F. CARUTHERS & Co., *Osyka.*

DEAR SIRS: We had this pleasure, on the 7th inst., advising the sale

of eight (8) bales of cotton for your acc't, and we now beg to wait upon you with the acc't sales of same, as follows:

4 bales WCH, Jess producing net, ... $476 36

4 " WCH, Winch " " 535 25

which amounts we have placed to the credit of your acc't, which sales will, we trust, prove correct and satisfactory.

86 We beg also to enclose herewith Mr. C. F. Caruthers' individual acc't curr't and your firm's acc't, both made up to this day, the former acc't being closed by the transfer, as per your Mr. W. C. Harrell's instructions, of the amount at its debit to the debit of the latter acc't, which shows a balance in our favor, this day, of $621.25. You will please take note also that the balance due us by your Mr. W. C. Harrell's individual acc't, as per acc't curr't rendered on the 25th Oct'r last, was also transferred on that date to the debit of Messrs. C. F. C. & Co.'s acc't. We would be much pleased to learn that the within acc'ts have proved correct and satisfactory.

Your valued favors of the 16th, 17th, and 18th inst., the two former in closing b.-l. and int.-revenue papers, for eight bales of cotton, the latter modifying your instructions relative to Mr. Webb's cotton, have come to hand. We will be much pleased to see Mr. Webb, and make the arrangement you desire for the settlement of your claim on his cotton.

87 We have not yet made the investment of Mr. Lea's remittance of $2,000 in currency. The general impression being, at the time Mr. Lea sent us that money, that gold would be down to less than 130, we were waiting in Mr. Lea's interest until it had reached that figure to make the investment, but, unfortunately, and to the surprise of the knowing ones, it has lately taken a sudden start upwards, and we are more at a loss to know what to do. Gold can be purchased to-day *a* 136¼ & 136½, and we would be pleased to know if Mr. Lea desires us to invest his money at that rate. We do not like to do so without his instructions, as in a day or two, there might be another change, and the precious metal be again on the decline.

Per to-day's train, we forward to your care all the articles you order for acc't of Mr. Ja's E. Lea, with the alteration, however, of one barrel of rump pork, instead of the three bbls. of mess pork ordered, the latter article being very scarce, owing to the closing up of the western rivers by ice. The few dealers who have a few barrels are asking

88 extravagant prices for same. No doubt navigation will be resumed shortly, when we will be able to purchase for Mr. Lea the three barrels of mess pork at a reasonable price. We hope Mr. Lea will approve our action in this matter. Please hand the enclosed bill to Mr. Lea.

We will, as instructed, sell Mrs. Jennings' 2 bales of cotton on first favorable opportunity.

Our cotton market is pretty active, though prices are unchanged. We enclose a price-current for reference, and remain, d'r sirs,

Yours, very truly,

A. MILTENBERGER & CO.
P. pro. E MILTENBERGER.

Continuance.

MONDAY, *June 1st*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

89 This case came on for trial to-day—B. & G. for pl'ff's; C. S. & C. for def't's—when, after hearing further evidence, said cause was left open and continued to Tuesday, the 9th inst., at 10½ o'clock a. m.

Memorandum.—Filed June 3, 1868.

Cotton received from C. F. Caruthers & Co., from the day we authorized them to draw from A. Miltenberger & Co.

Date.	Conveyance.	Marks.	No. of bales.	Price sold.
1866.				
Oct. 29	Jackson R. R.	Jack.	2	30½
" "	"	Ape.	2	30½
" "	"	Jaw.	1	31c
" "	"	S. O. N.	3	30½
" "	"	Gay.	1	31c
Nov. 2	"	Jack.	4	30
" "	"	Ike.	4	30½
" "	"	Dike.	2	30
" 5	"	Johns.	3	30½
" "	"	Elijah.	4	31
" "	"	Bell.	3	30½
" "	"	H. & F.	1	31
90				
Nov. 7	"	Jenkins.	5	30½
" "	"	Z. G. N.	4	31
" "	"	Tate.	2	30½
" "	"	J. L. W.	1	30½
" "	"	T. M. L.	2	31
" "	"	Avery B.	2	30½
" "	"	Buck J.	2	30½
" "	"	Haw.	1	31
" "	"	M. M. R.	1	30
" "	"	H. L.	1	27
" 10	"	Ford.	1	30½
" "	"	C. W. T.	2	31
" "	"	Gin.	1	31
" "	"	C. W. A.	1	30½
" "	"	S. J.	4	30½
" "	"	T. N. L.	1	30½
" 19	"	Joe B.	2	30
" "	"	Hamp.	5	31
" 21	"	F. W.	3	30
" 26	"	W. C. H.	4	30
" "	"	"	2	30
" "	"	"	1	30
" "	"	"	3	30
" 28	"	"	3	30
Dec. 3	"	H. & F.	4	30
" "	"	"	4	30
" 8	"	W. C. H.	6	30½
" "	"	"	1	30½
" 15	"	R. E. C.	5	30½
				28
91				
" 17	"	W. C. H.	1	30½
" "	"	"	10	28,31,31½
" "	"	"	2	30½
" 21	"	"	4	30½ 32
" "	"	"	4	32
1867.				
Jan'y 10	"	Jake.	1	31½
" "	"	Wach.	2	31c
" "	"	Ben.	1	31½
" 18	"	E. J. W.	4	30
" "	"	J. S.	1	31½
" "	"	J. A. W.	1	30½
" "	"	T. P. H.	1	31½
" "	"	Howe.	1	31½
" 21	"	M. C. F.	2	31½ 30½

Date.	Conveyance.	Marks.	No. of bales.	Price sold.
" "	"	M. G. B.	1	31
" "	"	W. C. H. Tare.	1	30½
" "	"	W. C. H. C. T. W.	2	30½
" 28	"	W. C. H. H. L. T.	1	30½
" "	"	W. C. H. A. B.	2	29
Feb. 1st	"	W. C. H. Dark.	3	29
" 8	"	B. E. A.	5	28½ 30
" 15	"	Gay.	1	26
" "	"	W. C. H. Ike.	1	26
" "	"	W. C. H. Hunt.	2	26
" 19	"	W. I. W.	1	26
M'ch 4	"	Jim.	1	26
" "	"	Ponell.	1	26
" 23	"	R.	3	26
Apr. 12	"	Harrell.	2	26
" "	"	J. D. H.	1	23
	"	Ohd.	1	24
	A'c. to April 15, 1867.		168	

92 U. S. internal-revenue tax paid by A. Miltenberger & Co., on 51 bales c., and by C. F. Caruthers & Co., on 117 b.c.

Order & sub. duc. tec.—Filed June 6, 1868.

Fourth district court of New Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20288.

On motion of Bonner and Goode, att'ys for pl'ff, and on suggesting to the court that the def'ts have letters and copies of letters in their possession which are material as evidence in this case, it is ordered that A. Miltenberger & Co., be ordered to produce in court on Tuesday, 9th June, at 11 o'clock a. m., the original letter of C. F. Caruthers & Co., dated Dec. 27, 1866, advising them of the drawing of the drafts of Dec. 24, 1866, for $250, to the order of W'm M. Curtis, deputy collector, together with a copy of their answer from their letter-book, acknowledging
93 its receipt, and promising to honor same. Also original letter of C. F. Caruthers & C'., advising them of the drawing of the draft of Dec. 3, 1866, for $140, together with a copy of their answer to same.
Please give Mr. Bonner those letters if you have them.

H. M. SPOFFORD.

A. MILTENBERGER & Co.

Sheriff's return.

Received, June 8, 1868, and, on the same day, month, and year, served copy of the within motion & order to produce on A. Miltenberger & Co., defendants herein, through E. Miltenberger, in person, who' I interrogated, says he is one of the firm of A. Miltenberger & Co., de-

fendants herein, at their office, No. 173 Common street, and returned same day.

JOHN HECTOR,
Deputy Sheriff.

94 *Continuance.*

Fourth district court.

TUESDAY, *June 9th*, 1868.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

This cause was continued to Friday, the 12th inst., at 10½ o'clock a. m.

Note of evidence.—Filed June 12th, 1868.

E. G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

Plaintiff offers in evidence—
The two letters, marked A A & B B.
The document, " C C.

95 *Letter A A, offered in evidence.—Filed June* 12, 1866.

OSYKA, MISS., *Dec.* 27, 1868.

Messrs. A. MILTENBERGER & Co.,
New Orleans.

GENT'N: Your favor of yesterday is at hand. We have examined the account sale referred to, and find that you are right. Under date of the 24th inst., we draw on you, at sight, in favor of W'm M. Curtis, for two hundred and fifty dollars.

Yours, very truly,

C. F. CARUTHERS & CO.
P'r MURRAY.

Letter B B, offered in evidence.—Filed June 12, 1868.

NEW ORLEANS, *April 8th*, 1867.

Messrs. C. F. CARUTHERS & Co., *Osyka.*

96 DEAR SIRS: We were quite surprised, last Saturday, on being presented for payment, with six drafts, drawn by you on us in favor of W'm M. Curtis, deputy collector, for the following amounts, respectively: $1,000; $500; $140; $500; $400, and $250. Total, $2,790. These drafts, with the exception of one, which is drawn at 10 days from date, are all sight-drafts, and drawn at different periods, as far back, some of them, as the months of Sept. & Oct. last.

It is true that we promised to pay some of them at the time, but, as they were not presented, we were under the impression that you had paid them yourselves, with the money we sent you, at different times, inasmuch as you never made mention of them subsequently, altho' your acc't-current was rendered some time after some of the drafts had been

Bond of appeal.—Filed Feb. 3, 1868.

Know all men by these presents that we, Edwin G. Cook, as principal, and Steele, Pinckard & Co., as sureties, are held and firmly bound unto the clerk of the fourth district court, parish of Orleans, his executors, administrators, and assigns, in the sum of two hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals,
103 and dated in the city of New Orleans, on this 4th day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bound Edwin G. Cook has this day filed a petition of appeal from a final judgment rendered against him in the suit of Edwin G. Cook vs. A. Miltenberger & Co., No 20228, in the fourth district court of New Orleans, on the 22d day of June, 1869, and signed on the twenty-sixth day of June, 1869:

Now, the condition of the above obligation is such, that the above-bound Edwin G. Cook shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said Steele, Pinckard & Co. shall be liable in his place.

EDWIN G. COOK, [L. S.]
By J. M. BONNER.
STEELE, PINCKARD & CO. [L. S.]

Signed, sealed, and delivered in the presence of—
J. M. BONNER.

104 *Citation.—Filed Feb. 3, 1869.*

The State of Louisiana, fourth district court for the parish of Orleans.

To Mr. A. MILTENBERGER & Co., greeting:

Whereas Edwin G. Cook has, on the 3rd day of February, filed in the office of the clerk of the fourth district court of New Orleans, a petition of appeal from a certain final judgment rendered in the said court against him, which appeal is returnable in the supreme court for the State aforesaid, on the second Monday in March next:

You are, therefore, hereby cited to appear in the said court on the day last aforesaid to answer to the said appeal.

Witness the Honorable Paul E. Theard, judge of the court aforesaid, this 3d day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

FRANK WALL,
Deputy Clerk.

105 *Sheriff's return.*

Received, Feb. 5th, 1869, and, on the 6th day of same month and year, served copy of the within notice of appeal on G. Campbell, esq., of Campbell, Spofford & Campbell, att'ys for def'ts.

Ret. same day.

H. T. LYND, *D'y Sh'ff.*

Decree of supreme court.—Filed June 5th, 1871.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, May 22, 1871.

EDWIN G. COOK
vs.
A. MILTENBERGER & CO. } No. 2162.

Appeal from the fourth district court for the parish of Orleans.

Mr. Justice Howell delivered the opinion of the court in the
106 words and figures following, to wit:

Plaintiff, collector of internal revenue for the first district of Mississippi, sues the defendants upon six drafts, drawn by C. F. Caruthers & Co., of Osyka, Miss., in pursuance of the following letter of defendants, dated 26th October, 1866:

"We have no objection to your drafting upon us in payment of the internal-revenue tax on cotton shipped to us. Your drafts for same will therefore be duly honored." This was in reply to the following, from said Caruthers & Co., of 24th October:

"Please to inform us whether it would suit you if we were to give a draft on you for the internal-revenue tax, the collector here preferring the same instead of money."

The drafts amount to $2,790; are dated, the first, on 27th October, payable at ten days; the second, on 10th Nov., at sight; the third, 3d Dec., at sight; the fourth, 15th Dec., at sight; the fifth, 24th Dec., (1866,) at sight, and the sixth, 28th Jan., 1867, at sight, and were protested 11th April, 1867. The defendants except that there is no cause
of action, because the laws of the United States prohibit the
107 collectors from collecting taxes in anything but lawful money, and if any party is entitled to recover it is the United States; and for answer, they allege that they had no notice of said drafts until after the account of the drawers was closed and settled; that said drafts are largely in excess of any shipments to defendants; and that the non-presentment by the holder, the failure to give notice by the drawers, the time given to the latter, and the violation of the act of Congress, have released defendants, who plead illegality, collusion, fraud, and want of interest in plaintiff. The exception was maintained and plaintiff appealed.

The laws of Congress invoked by defendants are enacted in the interest of the Government of the United States and cannot avail as a defence to this action on behalf of defendants, who are liable, if at all, on their agreement to accept commercial paper given for the amount of the revenue tax on cotton shipped to them.

(See Brightley' Dig., p. 887, 888, §§ 50, 57, 58, 59, 60, 66; 13
108 Stat. at Large, p. 400, §§ 25, 51; 14th Stat. at Large, p. 98, §§ 1 and 2.)

There is ample proof that defendants were notified of each draft as drawn, and promised to pay them, and that they were drawn for the tax on cotton shipped to defendants, in accordance with their authorization of October 26th, 1866. Their subsequent settlement with the drawers without including or providing for the same was at their own risk, so far as the holder is concerned. The written promise to accept an exist-

ing bill is an absolute acceptance, and nothing but payment or a release can exonerate such acceptor. (Story on Bills, §§ 244, 254; Parsons on Notes & Bills, vol. 1. p. 324.) There was a written promise on the part of defendants to honor each one of these drafts in addition to the first letter agreeing to do so.

Under the circumstances they must be held liable.

It is therefore ordered that the judgment appealed from be reversed and that plaintiff recover of defendants, A. Miltenberger and G. Miltenberger, in solido, the sum of $2,790, with legal interest from 11 April, 1867, and costs in both courts.

109 A true copy.

[SEAL.] M. P. JULIAN,
Deputy Clerk.

Fieri facias.—Issued June 6th, 1871.

State of Louisiana, fourth district court for the parish of Orleans.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you, that by seizure and sale of the property, real and personal, rights and credits, of defendants, A. Miltenberger and G. Miltenberger, in solido, in the manner prescribed by law, you cause to be made the sum of twenty-seven hundred and ninety dollars, with legal interest from 11th April, 1867, till paid; and also the sum of one hundred and twenty dollars cents costs, as well as your own
110 costs and charges, to satisfy a judgment rendered against the said defendants, A. Miltenberger & Co., in our fourth district court for the parish of Orleans, 22d day of May, 1871, in favor of plaintiff, Edwin G. Cook, and how you shall have executed this writ you make return to our said court, within seventy days, according to law.

Witness the Honorable Paul E. Theard, judge of the said court, this 6th day of June, in the year of our Lord 1871.

[SEAL.] FRANK WALL, *D'y Clerk.*

Sheriff's return.

Received June 6th, 1871. Returned by order of plaintiff's attorney, defendant having appealed to the United States Supreme Court.

Returned Aug. 15, 1871.

ROB'T SWAIN, *D'y Sh'ff.*

111 *Order.—Filed June 8th*, 1871.

Fourth district court.

THURSDAY, *June* 8th, 1871.

Present, Honorable Paul E. Theard, judge.

EDWIN G. COOK
vs.
A. MILTENBERGER & Co. } No. 20228.

A writ of error having been presented to the court in this case, the service of the same is hereby acknowledged and the clerk ordered to transmit the same to the Supreme Court of the United States at Washington.

Petition (for writ of error.)—Filed June 8th, 1871.

To the Honorable J. P. Bradley, associate justice of the Supreme Court of the United States:

The petition of A. Miltenberger and G. Miltenberger, partners
112 by the name of A. Miltenberger, shows:

That, in 1868, the petitioners were sued by Edwin G. Cook for the sum of $2,790, upon drafts which he alleged the petitioners had accepted, and which were protested for non-payment.

These petitioners defended the suit, and alleged that it appeared from the petition, and that the fact was, that the plaintiff was a collector of the internal revenue of the United States for the 1st district of Mississippi; and that the said drafts were taken by the plaintiff in payment of the taxes of the United States imposed upon cotton raised and produced in that district, by agreement with the drawers of the same; and that the acts of Congress prohibit the collection of taxes in such form or manner, and the collector from maintaining any suit of the kind.

Your petitioners show that the fourth district court for the parish of Orleans, upon the pleadings and proofs, sustained the exception and dismissed the petition at the costs of the plaintiff, and thereupon he appealed to the supreme court of the State of Louisiana.

113 And that such proceedings took place in that court that the judgment of the district court of the parish aforesaid was reversed, and a judgment rendered in the said court of $2,790, with interest from the 11th April, 1867, and costs in the supreme and district courts. This judgment became final, on the 30th May, 1871, upon the refusal of the supreme court to allow a rehearing on that day, and thereupon the plaintiff carried a certified copy of the opinion and decree of the supreme court to the 4th dist. court of New Orleans, and execution was issued thereon from that court upon the same, according to the code of practice.

Your petitioners shew that they claim to be exempt from the payment of said drafts, under the acts of Congress regulating the collection and transfer and disbursements of the public money and the application of said acts to the internal revenue; and that under the said acts no such collections could be made, and that the supreme court of the State decreed against the claim as set up and made.

114 He therefore respectfully asks for the allowance of a writ of error to the 4th dist. court of the parish of Orleans to the Supreme Court of the United States, to be returnable to the next term of the Supreme Court of the United States; also for citation and an approval of the bond herewith tendered, and that the same be a supercedeas of the said judgment.

J. A. CAMPBELL.

JUNE 7, 1871.

Writ of error allowed.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. States.

Bond.—Filed June 8th, 1871.

Know all men by these presents that we, A. Miltenberger & Co., as principals, and Charles William Miltenberger, as surety, are held and firmly bound unto Edwin G. Cook, in the full and just sum of six

115 thousand dollars, to be paid to the said Edwin G. Cook, or his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately at the fourth district court of the parish of Orleans, holding session in the city of New Orleans, in a suit depending in said district court, wherein Edwin G. Cook is plaintiff, and A. Miltenberger & Co., , judgment was rendered against the said A. Miltenberger & Co., defendants, and the said A. Miltenberger & Co having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit; and a citation directed to the said Edwin G. Cook, citing and admonishing him to be and appear at a Supreme Court of the United States,
116 to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said A. Miltenberger & Co. shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

A. MILTENBERGER & CO. [L. S.]
C. W. MILTENBERGER. [L. S.]

Sealed and delivered in the presence of—
W'M S. McNEIL.
F. LEGENDRE.

(Endorsed:) Approved June 7, 1871.
JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

Writ of error.—Filed June 8, 1871.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge
117 of the fourth district court for the parish of Orleans, holding sessions in New Orleans, greeting:

Because, of the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said fourth district court of parish of Orleans before you, between Edwin G. Cook, plaintiff, and A. Miltenberger and G. Miltenberger, partners by the name of A. Miltenberger & Co., defendants, which proceedings and judgment include the judgment and proceedings of the supreme court of Louisiana recorded therein, and upon which execution by the said fourth district court has been allowed, a manifest error hath happened, to the great damage of the said A. Miltenberger & Co., as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to
118 the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Su-

preme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.]

D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

(Endorsed:) Allowed.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

(Copy of above writ of error furnished for file in clerk's office 4th dist. court.)

119 *Citation.—Filed June* 8, 1871.

THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Edwin G. Cook, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the fourth district court of the parish of Orleans, State of Louisiana, wherein A. Miltenberger and G. Miltenberger, partners by the name of A. Miltenberger & Co., are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the
120 Supreme Court of the United States this seventh day of June in the year of our Lord one thousand eight hundred and seventy-one.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

Marshal's return.

Service acknowledged June 8th, 1871.

JOHN M. BONNER,
Att'y for E. G. Cook.

121 *Certificate.*

I, George P. Fernald, clerk of the fourth district court for the parish of Orleans, hereby certify that the above and foregoing one hundred and twenty (120) pages do contain a full, correct, and complete transcript of the record, including all proceedings had, documents filed, testimony and evidence adduced on the trial of the cause, wherein Edwin G. Cook is plaintiff, and A. Miltenberger & Co. are defendants; which said cause was instituted in the fourth district court of New Orleans,

the records of which court have been transferred by an act of the legislature of this State to the fourth district court for the parish of Orleans, on the 30th day of Jan., in the year of our Lord eighteen hundred and sixty-eight.

In testimony whereof I hereunto set my hand and affix the seal of said court, at New Orleans, on the ninth day of November, A. D. 1871, and in the 96th year of the Independence of the United States.

[SEAL.] GEORGE P. FERNALD, *Clerk.*

122 I, Paul Emile Theard, sole judge of the fourth district court for the parish of Orleans, do certify that George P. Fernald is clerk of said court; that the same is a court of record having common-law jurisdiction; that the signature, "George P. Fernald," to the foregoing certificate is the proper handwriting of him, the said George P. Fernald, clerk; that to his official acts, as such, full faith and credit are due and owing; and I do further certify that said attestation is in due form of law.

Given under my hand and seal at the place and on the date to the aforegoing certificate written.

PAUL E. THEARD, *Judge.*

I, George P. Fernald, clerk of the fourth district court for the parish of Orleans, hereby certify that the Hon. Paul Emile Theard is sole judge of said court, duly commissioned, qualified, acting, and
123 presiding as such, and that the signature, "Paul E. Theard," to the foregoing certificate is in the proper handwriting of him, the said Hon. Paul Emile Theard, judge.

In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of New Orleans, on the day and date to the first aforegoing certificate written.

[SEAL.] GEORGE P. FERNALD, *Clerk.*

(Indorsement on cover:) No. 550. A. and G. Miltenberger as A. Miltenberger & Co., plaintiffs in error, vs. Edwin G. Cook. Louisiana 4th dist. court. Filed 18th December, 1871.